

## Internal Revenue Service

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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PLR-115922-08

Date:

October 01, 2008

### Legend

Taxpayer =

X =

Y =

Z =

State =

Country =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This responds to a letter ruling request dated March 20, 2008, submitted on behalf of Taxpayer, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make (1) an election under § 301.7701-3(c)(1)(i) to classify Taxpayer as a corporation for federal tax purposes effective as of Date 2, and (2) an election under section 856(l) of the Internal Revenue Code to treat Taxpayer as a taxable REIT subsidiary ("TRS") of Z effective as of Date 2.

### Facts

X, a Country corporation, indirectly owns all of the stock of Y. Taxpayer, an affiliate of Y, is a single member limited liability company incorporated in State as a shelf entity on Date 1. Y, through its affiliates, develops U.S. residential real estate projects and owns and manages office properties in select U.S. cities.

On Date 2, X and others jointly acquired all the stock of Z. Z is a U.S. Real Estate Investment Trust (REIT).

Upon the acquisition of Z, Taxpayer became operational as a management company that performs services for tenants of certain properties owned by Z. Therefore, Taxpayer and Z intended to elect under section 856(l) to treat Taxpayer as a TRS. On Date 3, Y and Z jointly filed Form 8875, Taxable REIT Subsidiary Election to treat Y as a TRS of Z. It was intended that Taxpayer, as a subsidiary of Y, would also be included on the Form 8875 as a TRS of Z. Additionally, Taxpayer intended to file Form 8832 and elect to be taxed as a corporation for federal tax purposes. Taxpayer intended for both the election to be taxed as a corporation and the election to be treated as a Taxable REIT Subsidiary to be effective Date 2.

Because Taxpayer and Y had no U.S. in-house tax professionals, the former Vice President of Z (the VP Z) was charged with the responsibility of filing all relevant tax elections for Y and its affiliates, including Taxpayer. However, the VP Z failed to include Taxpayer in the list of Y's subsidiaries making the TRS elections when the Form 8875 was filed. Additionally, the VP Z neglected to file Form 8832 for Taxpayer to be taxed as a corporation for federal tax purposes.

The failure to include Taxpayer on the Form 8875 and the failure to file Form 8832 for Taxpayer were discovered by the Vice President of X (the VP X) shortly after Date 4 when the U.S. federal income tax returns of Z and Y were reviewed. Once advised of the availability of requesting 9100 relief, the VP X authorized the submission of this request.

Taxpayer and Z make the following representations.

1. The granting of relief under § 301.9100-3 would not result in Taxpayer or Z having a lower tax liability in the aggregate for all years to which the election applies than each would have had if the election had been timely made (taking into account the time value of money).
2. Neither Taxpayer nor Z knowingly chose not to file the election.
3. Neither Taxpayer nor Z used hindsight in requesting relief.
4. Finally, Taxpayer and Z represent that they are not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662. Taxpayer has submitted the affidavit of the VP X attesting to and supporting the facts and representations underlying this ruling request.

### Law and Analysis

Section 301.7701-1(b) provides that the classification of organizations that are recognized as separate entities is determined under § 301.7701-2, § 301.7701-3 and § 301.7701-4. Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7) or (8) (an eligible entity) can elect its classification for federal tax purposes as provided in § 301.7701.

Section 301.7701-3(b)(1)(i) provides that, except as provided in § 301.7701-(b)(3), unless the entity elects otherwise, a domestic eligible entity is a partnership if it has two or more members, or disregarded as an entity separate from its owner if it has a single owner.

Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided in § 301.7701-3(b) by filing a Form 8832 with the service center designated on Form 8832.

Section 301.7701-3(c)(iii) provides that the effective date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under rules set forth in §§ 301.9100-2 and 301.9100-3, to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election to include an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 sets forth the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 856(l) provides that a REIT and a corporation (other than a REIT) may jointly elect to treat such corporation as a taxable REIT subsidiary. To be eligible for treatment as a taxable REIT subsidiary, section 856(l)(1) provides that the REIT must directly or indirectly own stock in the corporation, and the REIT and the corporation must jointly elect such treatment. Section 856(l)(2) provides that the term "taxable REIT subsidiary" includes, with respect to any REIT, any corporation (other than a REIT) with respect to which a taxable REIT subsidiary of such trust owns directly or indirectly securities possessing more than 35 percent of the total voting power of the outstanding securities of such corporation, or securities having a value of more than 35 percent of the total value of the outstanding securities of such corporation. The election is irrevocable once made, unless both the REIT and the subsidiary consent to its revocation. In addition, the election and the revocation may be made without the consent of the Secretary.

In Announcement 2001-17, 2001-1 C.B. 716, the Internal Revenue Service (Service) announced the availability of Form 8875, Taxable REIT Subsidiary Election. According to the Announcement, this form is to be used for tax years beginning after 2000 for eligible entities to elect treatment as a taxable REIT subsidiary. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the tax year. The instructions further provide that the effective date of the election cannot be more than 2 months and 15 days prior to the date of filing the election, or more than 12 months after the date of filing the election. If no date is specified on the form, the election is effective on the date the form is filed with the Service. Officers of both the REIT and the taxable REIT subsidiary must jointly sign the form, which is filed with the IRS Service Center in Ogden, Utah.

### Conclusion

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-1 and § 301.9100-3 have been satisfied. As a result, Taxpayer is granted an extension of time of 60 days from the date of this letter to elect to be classified as an association taxable as a corporation for federal income tax purposes, effective Date 2. The election should be made by filing Form 8832 with the appropriate service center. A copy of this letter should be attached to the election.

Additionally, we conclude that Taxpayer and Z have satisfied the requirements for granting a reasonable extension of time to elect under section 856(l) to treat Taxpayer as a TRS of Z effective as of Date 2. Accordingly, Taxpayer and Z are granted 60 days from the date of this letter in which to file Form 8875 to make the intended TRS election. This ruling is limited to the timeliness of the filing of the Form 8875. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Z otherwise qualifies as a REIT under subchapter M of the Code.

Except as specifically set forth herein, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed with regard to whether the tax liability of either Taxpayer or Z is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

*William P. O'Shea*

William P. O'Shea  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes

cc: